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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

BAY CHEMICAL COMPANY, INC.; BARBARA
ALLEN; CENEX AGRICULTURE, INC.; LONE STAR
NW, INC.; MINTERCREEK DEVELOPMENT;
NORDLUND BOAT COMPANY, INC.; NORDLUND
PROPERTIES CO. INC.; NORMAN NORDLUND;
PHYLLIS NORDLUND; RYDER TRUCK RENTAL,
INC.; STREICH BROTHERS, INC.; KATHRYN M.
SWINEHART; VANCE LIFT TRUCK SERVICES,
INC.; OLSON & CURRAN BARNACLE STOPPING;
SEAGULL PROOFING; SALT WATER FREE;
VERTICAL DRY DOCK CO., LTD.; dba OLE &
CHARLIE'S HIGH & DRY CO. AND OLE & DICK'S
BOATHOUSES; DON OLSON & ARNOLD OLSON
dba BIG "O" CO.; DON OLSON; ARNOLD & PETER
CURRAN dba WEST-WATERWAY ASSOCIATES;
DONALD S. AND BARBARA L. OLSON;
CHARLES P. AND PATRICIA CURRAN; MOLLY A.
BARRY; KAY E. OLSON.

Defendants.

Civil Action No.
C99-5521 RJB

Hon. Robert J. Bryan

UNITED STATES' MOTION TO ENTER THE CONSENT DECREE

Comes now the plaintiff, the United States of America, on behalf of the United States
Environmental Protection Agency ("EPA"), and moves the Court to enter the Consent Decree
herein. As grounds to support this motion, plaintiff states:



1. The Consent Decree in the above-captioned case was lodged with the Court on October 5, 1999, and a Notice of Lodging of the Consent Decree was also filed on that date.

2. Pursuant to Title 28, Code of Federal Regulations Section 50.7 (28 C.F.R. § 50.7), the plaintiff must notify the public of its right during a thirty-day period to submit comments on the Consent Decree before the Court may execute and sign and enter the Consent Decree.

3. The Department of Justice, in accordance with these provisions published a notice in the *Federal Register* notifying the public of the proposed Consent Decree. That Notice was published on October 26, 1999 at 64 Fed. Reg. 57653. Following a request from counsel for a potentially responsible party that was not a party to this Decree, this comment period was extended by an additional two weeks. *See* 64 Fed. Reg. 68701 (Dec. 8, 1999).

4. The United States has received two sets of comments on the proposed Consent Decree, which the United States has considered.

5. As a result of these comments, the settlement amount to be paid by one group of Settling Defendants was doubled. All parties to the Consent Decree have agreed to this change in settlement terms.

6. The Consent Decree is fair, reasonable, and protective of public health and the environment..

Wherefore, the plaintiff moves this Court to sign and enter the Consent Decree herein.

DATED: May 9, 2000

Respectfully submitted,

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November 23, 1999

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Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Re: United States v. Bay Chemical Company, et al
No. C-995521(RJB)
DOJ Reference # 90-11-2-06010

To Whom it May Concern:

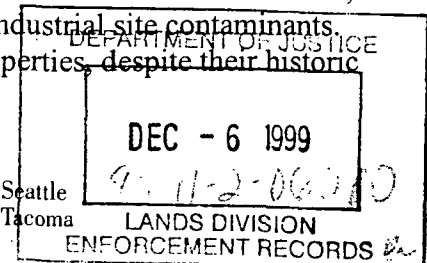
This letter is written on behalf of General Metals of Tacoma, Inc., one of the "potentially responsible persons" identified by EPA for the Head of Hylebos Waterway Problem Area of the Commencement Bay Nearshore/Tideflats Superfund Site. General Metals understands that EPA has agreed to settle CERCLA liability of certain owners or former owners of property along the Hylebos Waterway. That settlement is embodied in the Consent Decree under Civil Action No. C-995521(RJB).

In principle, General Metals does not oppose de minimis or small party CERCLA settlements. In addition, General Metals does not have a specific objection regarding the specific companies and individuals identified in the Consent Decree.

However, one of EPA's stated basis for accepting the settlement is the absence of data showing these properties are contaminated with PCBs. Yet, as noted in the documentation EPA references to support this settlement, most of these properties have never been tested for PCBs. Each of these properties has been subject to longstanding industrial uses. PCBs were historically used in a variety of electrical and other industrial equipment. At CERCLA sites around the country, including Commencement Bay, PCBs over time have been released to the environment, through no negligence or fault of any person. PCBs are ubiquitous industrial site contaminants. EPA's willingness to assume that PCB's are not present on these properties, despite their historic industrial operations, is not justified.

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Seattle
Tacoma



Assistant Attorney General
November 23, 1999
Page 2

Furthermore, EPA has retained a settlement reopener for circumstances where a settling party in the future contaminates waterway sediments. How will EPA determine whether these properties have contributed future sediment contamination when EPA does not have adequate data showing what chemicals are and are not there?

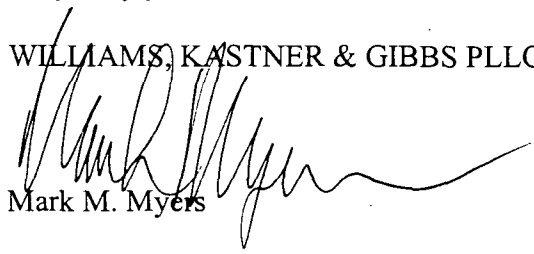
The Hylebos Waterway Problem Areas have been found to contain PCB concentrations exceeding EPA's sediment quality objectives. EPA is proposing to allow certain industrial property owners who have never tested for PCBs to settle without determining whether PCBs are in fact present. EPA at a minimum should require some screening level analysis to evaluate whether PCBs are present on these properties and, if so, whether they have been released to the Hylebos Waterway.

In addition, EPA's settlement analysis examined the location of these properties and compared them to nearby subtidal surface sediment samples. EPA apparently concluded these properties were not a significant source of contamination to Hylebos Waterway Problem Areas because the surface sediment samples did not contain significant contaminant concentrations. Yet, EPA recently rejected surface sediment as the guideline for determining sediment cleanup areas in the Hylebos Waterway. Instead, EPA has now focused on subsurface sediment samples, which may be indicative of historic contaminant releases, to evaluate areas potentially requiring remediation. If EPA intends to hold the remaining Hylebos PRPs liable for subsurface sediment contamination, EPA must determine here that the settling parties did not contribute to subsurface contamination.

We appreciate the opportunity to comment on EPA's proposed settlement. Should you have any questions, please feel free to contact the undersigned.

Very truly yours,

WILLIAMS, KASTNER & GIBBS PLLC



Mark M. Myers

MMM:wpc

cc: Lori Houck, Esq.
Mr. Tom Zelenka
Mr. Mat Cusma

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Assistant Attorney General
ELIZABETH L. LOEB, Trial Attorney
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United States Department of Justice

RECEIVED
JUL 5 2000
OFFICE OF REGIONAL COUNSEL
EPA - REGION X

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

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BARRY; KAY E. OLSON,

Defendants.

Civil Action No.
C99-5521 RJB

Hon. Robert J. Bryan

**UNITED STATES' REPLY TO GENERAL METALS
OF TACOMA, INC'S OPPOSITION TO THE UNITED STATES'
MOTION TO ENTER THE CONSENT DECREE**

I. INTRODUCTION

The United States of America, following the publication of notice of the proposed Consent Decree in the *Federal Register*^{1/}, received and considered comments by two commentors, one of whom was General Metals of Tacoma, Inc. ("General Metals"). The comments resulted in information being discovered which caused a modification of the Consent Decree, to the extent that one group of the settling parties paid twice the initially provided figure. On May 12, 2000, the United States filed a Motion to Enter the Consent Decree and included, *inter alia*, the comments that had been received and a response to those comments. In addition to the parties on the service list, the United States sent a copy of the Motion for Entry to the commentors. On or about May 26, 2000, General Metals sought leave from this Court to intervene as a party and file an opposition to the United States Motion to Enter. Although the United States does not object to General Metals intervening in the case, we object herein to General Metals Opposition to the Entry of the Consent Decree ("Opposition"). Further, we do not believe that General Metals has raised any issue requiring a hearing and ask the Court to deny General Metals request for hearing.

General Metals' initial comments, dated November 23, 1999, and their Opposition both raise the same issues. Although the United States responded to the initial comments in our

^{1/} The notice provided thirty days for public comment, which period was extended by an additional two weeks. See 64 Fed. Reg. 57653 (Oct. 26, 1999) and 64 Fed. Reg. 68701 (Dec. 8, 1999).

Motion to Enter, we are submitting this brief in response to reiterate our position that the Consent Decree is fair, reasonable, and consistent with the goals of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

II ARGUMENT

General Metals opposes our motion to enter the consent decree because it believes the approach EPA used in determining that the settling defendants are minor contributors of hazardous substances to the waterway is flawed as to PCBs. General Metals provided three bases for their position. First, the United States does not have complete information of the potential use and spills of PCBs by the parties. Second that PCBs were not sampled in upland soils at all properties that are involved with the settlement; and third that EPA based its decision on intertidal and subtidal surface samples in the Waterway, whereas PCBs from the properties more likely would be in deeper subsurface levels. In addition, General Metals argues that it is not appropriate for EPA to base its decision on the absence of data, but should have gathered data proving the Settling Defendants did not contribute any PCBs to the Waterway.

EPA did not base its decision to enter into this settlement on an absence of data. EPA's determination that the Settling Defendants are minor contributors of hazardous substances is founded upon a substantial quantum of data about the releases in the Hylebos Waterway. Since 1990, there have been 557 surface sediment samples collected in the Hylebos Waterway, and 109 sediment cores that were split into 200 samples.^{2/} From this data EPA has determined which areas in the Waterway are presenting an endangerment to human health and the environment

^{2/} See HCC's Pre-remedial Design Evaluation Report, page 1-6.

requiring response action and which areas do not require response action. As stated in our Memorandum in Support of our Motion to Enter and in the attached Declaration of the EPA Remedial Project Manager (see paragraphs 11, 20, 26, and 27 of Hiltner's Declaration), EPA considered all of the data that has been collected to date in making its decision on this settlement. EPA's decision is also based on a significant amount of available information about the activities conducted by the Settling Defendants that may have released such substances into the Waterway. (See paragraphs 11, 21, and 27 of Hiltner's Declaration and the Allocator's Reports dated September and October of 1997).

No information has been provided by General Metals that contradicts the overwhelming body of evidence that the Settling Defendants are minor contributors of hazardous substances. General Metals merely submitted general information that PCBs were utilized in many different commercial uses. General Metals argues that based on that information it must be presumed that the Settling Defendants used PCBs or owns or owned property that released PCBs into the Waterway. Even if that presumption is made, however, the evidence EPA has about the Settling Defendants' contributions indicates that they would be minor contributors and that it is reasonable to settle their liability in this settlement. There is no cleanup required on or off of the Settling Defendants' properties that can be linked to significant releases by the Settling Defendants.

General Metals argues that contaminants found in subsurface sediments are a better indicator of historic releases that may have come from the Settling Defendants' properties. However, the four subsurface samples with PCB levels ranging from 289 ppb up to 447 ppb located near properties owned or previously owned or operated by four of the Settling

Defendants proves only that there are those relatively minor levels of PCBs at those stations. It does not prove Settling Defendants contributed the PCBs or that they are more than minor contributors to releases of hazardous substances that are contributing to the cleanup of the Waterway. All of the sample locations, except one, are in areas determined not to require cleanup under CERCLA. Although the sample station off of Ole and Charlie's Marina is in a designated cleanup area, that is not due to the PCBs in the subsurface, which is below the cleanup level of 300 ppb, but for other organic compounds not typically associated with marinas, and for which there is a clear source across the waterway. What cleanup is occurring in the general vicinity of any of the properties in question can be attributed to other sources.^{3/}

General Metals' argument would require the government or potentially responsible parties to take samples to prove a negative - regardless of other information already in hand which would render such sampling superfluous and unnecessary. This is not required before entering into any settlement to resolve CERCLA liability, and is not necessary to make a settlement fair or in accordance with the objectives of CERCLA. There is more than enough data to support this settlement.

Any risks that may exist in entering into this settlement is offset by two significant terms of the settlement. First, the parties are paying a premium above and beyond their share of liability to offset the risk. Second, if information is discovered in the future that a party's contribution to the Waterway was more significant than would appropriately have allowed them to qualify as a minor contributor eligible for this Consent Decree, the United States can void the

^{3/} See paragraph 27 of the Hiltner Declaration.

covenant not to sue and the party will lose the protection from contribution suits as well.^{4/}

Therefore, it is not unfair or unreasonable to proceed with the settlement.

The issues raised by General Metals have been previously considered and the United States responded to those comments when submitting the Motion for Entry. The United States submits that the Court has received all the information necessary to reach a conclusion regarding the appropriateness of this Decree, and that General Metals request for a hearing should be denied.

III. CONCLUSION

As set forth above, the concerns of General Metals to not require that the Assistant Attorney General further modify or that the Court reject the Decree. The United States submits that the modified Decree clearly satisfies all of the relevant criteria: it is fair, reasonable, and protective of public health and the environment. Accordingly, the United States requests that the Court approve, sign and enter the proposed Decree as a final judgment with respect to the United

^{4/} Paragraph 15 of the Consent Decree, in the United States Reservation of Rights, provides:

Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reopen or institute proceedings against any individual Settling Defendant in this action or in a new action to reimburse the United States for Response Costs, and/or to issue an administrative order to any individual Settling Defendant seeking to compel that Settling Defendant to perform response actions relating to the Hylebos Waterway Problem Areas, and/or to reimburse the United States for additional costs of response if:

a. The United States finds that the Certifications made in Section VIII of this Decree are untrue or inaccurate in a material way; or

b. Information is discovered that indicates that such Settling Defendant contributed hazardous substances to the Hylebos Waterway Problem Areas in such greater amount or such greater toxic or other hazardous effects that such Settling Defendant no longer qualifies as a minor contributor under the criteria established by the Allocator's Reports.

States' complaint against the listed parties regarding the problem areas at the Head and Mouth of the Hylebos Waterway.

DATED: June 9, 2000

Respectfully submitted,

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Environment and Natural Resources Division
United States Department of Justice

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7 UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 BAY CHEMICAL COMPANY, INC.; BARBARA
14 ALLEN; CENEX AGRICULTURE, INC.; LONE STAR
15 NW, INC.; MINTERCREEK DEVELOPMENT;
16 NORDLUND BOAT COMPANY, INC.; NORDLUND
17 PROPERTIES CO. INC.; NORMAN NORDLUND;
18 PHYLLIS NORDLUND; RYDER TRUCK RENTAL,
19 INC.; STREICH BROTHERS, INC.; KATHRYN M.
20 SWINEHART; VANCE LIFT TRUCK SERVICES,
21 INC.; OLSON & CURRAN BARNACLE STOPPING;
22 SEAGULL PROOFING; SALT WATER FREE;
23 VERTICAL DRY DOCK CO., LTD.; dba OLE &
24 CHARLIE'S HIGH & DRY CO. AND OLE & DICK'S
25 BOATHOUSES; DON OLSON & ARNOLD OLSON
26 dba BIG "O" CO.; DON OLSON; ARNOLD & PETER
27 CURRAN dba WEST-WATERWAY ASSOCIATES;
28 DONALD S. AND BARBARA L. OLSON;
CHARLES P. AND PATRICIA CURRAN; MOLLY A.
BARRY; KAY E. OLSON.

Defendants.

CIVIL ACTION
NO. C99-5521RJB

Hon. Robert J. Bryan

26 Certificate of Service - 1

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the United States' Reply to General Metals of Tacoma, Inc's Opposition to the United States' Motion to Enter the Consent Decree was served by U.S. Mail, this June 9, 2000, upon the following persons:

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Certificate of Service - 2

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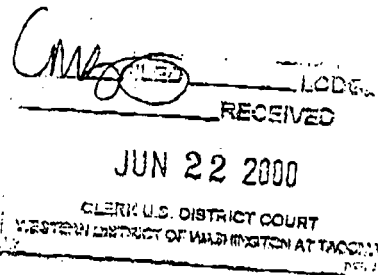
Neil Cowie
Neil Cowie

Certificate of Service - 3

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Environmental & Natural Resources Div.
Environmental Enforcement Section
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Washington, D.C. 20044

ENTERED
ON DOCKET

JUN 23 2000

BY DEPUTY CMGUNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BAY CHEMICAL, et al.,

Defendants.

Case No. C99-5521RJB

ORDER GRANTING GENERAL
METALS OF TACOMA'S MOTION
TO INTERVENE AND GRANTING
THE UNITED STATES' MOTION TO
ENTER CONSENT DECREE

This matter comes before the court on "General Metals of Tacoma, Inc.'s Motion to Intervene," (Dkt. No 22), and the United States' Motion to Enter Consent Decree (Dkt. No. 18.) The court has reviewed the pleadings filed in support of and in opposition to General Metals of Tacoma's ("General Metals") Motion to Intervene, the United States' Motion to Enter Consent Decree, and the record herein.

MOTION TO INTERVENE

Pursuant to Rule 24 (a) and (b) of the Federal Rules of Civil Procedure, and 42 U.S.C. section 9613 of the Comprehensive Environmental, Response, Compensation, and Liability Act ("CERCLA"), General Metals moves to intervene in this matter. The United States is not opposed to General Metals' Motion to Intervene. General Metals' Motion to Intervene should be granted.

MOTION TO ENTER CONSENT DECREE

On May 12, 2000, the United States filed its Motion to Enter Consent Decree. On May 26,

ORDER GRANTING MOTION TO INTERVENE, AND GRANTING THE UNITED STATES' MOTION TO ENTER CONSENT DECREE-I

1 2000, General Metals filed its Motion to Intervene, and "General Metals of Tacoma, Inc.'s
2 Memorandum in Opposition to United States' Motion To Enter Consent Decree" ("opposition").
3 General Metals' opposition was lodged by the court. The court has considered General Metals
4 opposition in its analyses of the parties' motions, therefore, General Metals' opposition should be
5 filed by the Clerk of the Court.

6 General Metals' argues that the Consent Decree is not fair, reasonable, and consistent with
7 the objectives of CERCLA (42 U.S.C. sections 9601-9675). General Metals makes three primary
8 arguments in seeking the court's denial of the United States' Motion to Enter Consent Decree: (1)
9 the Consent Decree would leave other potentially responsible parties ("PRPs"), including General
10 Metals, liable for all remaining Hylebos Waterway remedial costs; (2) entry of the Consent Decree
11 will cut off General Metals' contribution rights against the Settling Defendants, and (3) the
12 Environmental Protection Agency's determination that the Settling Defendants are "minor
13 contributors" is flawed because it is based upon sampling data from intertidal and subtidal surface
14 samples of hazardous substances, and is absent of sampling data for PCBs in subsurface sediment.
15 See General Metals' Mot. to Intervene at 1, 3, see also General Metals' Mem. in Opp'n 1, 5.

16 Under the section IX of the Consent Decree which is entitled "Reservation of Rights by
17 United States," paragraph 15 provides the following:

18 Notwithstanding any other provision in this Consent Decree, the United States
19 reserves, and this Consent Decree is without prejudice, to the right to reopen or
20 institute proceedings against any individual Settling Defendant in this action or
21 in a new action to reimburse the United States for Response Costs, and/or to issue
22 an administrative order to any individual Settling Defendant seeking to compel
23 Settling Defendant to perform response action relating to the Hylebos Waterway
24 Problem Areas, and/or reimburse the United States for additional costs of response
25 if: (a) The United States finds that the Certifications made in Section VIII
26 of this Consent Decree [Certification of Settling Defendant] are untrue or inaccurate
in a material way; or (b) Information is discovered that indicates that such Settling
Defendant contributed hazardous substances to the Hylebos Waterway Problem
Areas in such greater toxic or other hazardous effects that such Settling Defendant no
longer qualifies as a minor contributor under the criteria established by the
Allocator's Reports.

1 Proposed Consent Decree at ¶15 (a) & (b). Therefore, if "information is discovered in the future
2 that a [S]ettling [D]efendant's contribution to the [Hylebos] Waterway was more significant that
3 would have allowed them to qualify as a minor contributor under the Consent Decree, the United
4 States can void the covenant not to sue and the party will lose the protection from contribution suits
5 as well." (United States' Reply to General Metals' Opp'n at 5-6.)

6 General Metals has not sufficiently demonstrated that, if the Consent Decree is entered it
7 would lose its right to seek contribution against the Settling Defendants, the Consent Decree is not
8 fair, reasonable and consistent with the objectives of CERCLA, or that the court should not enter the
9 Consent Decree. The court should grant the United States' Motion to Enter Consent Decree.

10
11 Accordingly, it is hereby

12 **ORDERED:**

13 (1) General Metals of Tacoma Inc.'s Motion to Intervene (Dkt. No. 22) is **GRANTED**;

14 (2) The court has considered "General Metals of Tacoma, Inc.'s Memorandum in
15 Opposition to United States' Motion to Enter Consent Decree." Therefore, the Clerk of the Court
16 should file General Metal's Memorandum which was lodged with the court on May 30, 2000;

17 (3) The United States Motion to Enter Consent Decree (Dkt. No. 18) is **GRANTED**; and

18 (4) The Clerk is instructed to send uncertified copies of this Order to all counsel of record
19 and to any party appearing *pro se* at said party's last known address.

20
21 DATED this 22 day of June, 2000.

22 
23 ROBERT J. BRYAN
24 UNITED STATES DISTRICT JUDGE
25
26

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JUN 12 2000

OFFICE OF REGIONAL COUNSEL
EPA - REGION X

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

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BAY CHEMICAL COMPANY, INC.; BARBARA
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INC.; KATHRYN M. SWINEHART; VANCE LIFT
TRUCK SERVICES, INC.; OLSON & CURRAN
BARNACLE STOPPING; SEAGULL PROOFING;
SALT WATER FREE; VERTICAL DRY DOCK
CO., LTD.; dba OLE & CHARLIE'S HIGH & DRY
CO., AND OLE & DICK'S BOATHOUSES; DON
OLSON & ARNOLD OLSON dba BIG "O" CO.;
DON OLSON; ARNOLD & PETER CURRAN dba
WEST-WATERWAY ASSOCIATES; DONALD S.
AND BARBARA L. OLSON; CHARLES P. AND
PATRICIA CURRAN; MOLLY A. BARRY; KAY
E. OLSON,

Defendants.

CIVIL ACTION
No. C99-5521RJB

NOTICE OF APPEARANCE

TO: Clerk of the above Court

AND TO: All Counsel of Record

COPY

1 PLEASE TAKE NOTICE THAT Ryder Truck Rental, Inc., the defendant above named,
2 hereby makes and enters its appearance in the above-entitled action by its attorneys, the
3 undersigned, and requests that all future papers or pleadings except original process be served upon
4 its said attorneys at their address below stated.

5 DATED this 9th day of June, 2000.

6
7 Davis Wright Tremaine LLP
8 Attorneys for Defendant Ryder Truck Rental,
9 Inc.

10 By 

11 Katherine Kramer Laird
12 WSBA #20521
13
14
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26

1
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5
6
7 UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,)

9 Plaintiff,)

10 v.)

CIVIL ACTION
No. C99-5521RJB

CERTIFICATE OF SERVICE

11 BAY CHEMICAL COMPANY, INC.; BARBARA)
12 ALLEN; CENEX AGRICULTURE, INC.; LONE)
13 STAR NW, INC.; MINTERCREEK DEVELOP-)
14 MENT; NORDLUND BOAT COMPANY;)
15 NORDLUND PROPERTIES CO. INC; NORMAN)
16 NORDLUND; PHYLLIS NORDLUND; RYDER)
17 TRUCK RENTAL, INC.; STREICH BROTHERS,)
18 INC.; KATHRYN M. SWINEHART; VANCE LIFT)
19 TRUCK SERVICES, INC.; OLSON & CURRAN)
20 BARNACLE STOPPING; SEAGULL PROOFING;)
21 SALT WATER FREE; VERTICAL DRY DOCK)
CO., LTD.; dba OLE & CHARLIE'S HIGH & DRY)
CO., AND OLE & DICK'S BOATHOUSES; DON)
OLSON & ARNOLD OLSON dba BIG "O" CO.;)
DON OLSON; ARNOLD & PETER CURRAN dba)
WEST-WATERWAY ASSOCIATES; DONALD S.)
AND BARBARA L. OLSON; CHARLES P. AND)
PATRICIA CURRAN; MOLLY A. BARRY; KAY)
E. OLSON,)

21 Defendants.)

22 I, Jody Redding, declare and state as follows:

23 1. I am a resident of Snohomish County, Washington, over the age of 21 years and
24 not an interested party in the above-entitled matter.

25 2. I am employed by Davis Wright Tremaine LLP. My business and mailing
26 address are both 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington 98101-1688.

COPY

1 3. I hereby certify that on this 1st day of June, 2000, I caused to be personally served
2 the original Notice of Appearance and Certificate of Service via U.S. Messenger Service to:

3 Clerk of the U.S. District Court
4 Western District of Washington
5 1010 Fifth Avenue
6 Seattle, WA 98104

7 and a copy of the above referenced documents via First Class U.S. Mail to:

8 Steven Branon
9 Attorney at Law
10 1601 5th Avenue, Ste. 2200
11 Seattle, WA 98101

William H. Chapman
Preston Gates & Ellis
701 Fifth Avenue, Ste. 5400
Seattle, WA 98104-7078

12 Gregory A. Jacoby
13 McGavick Graves, P.S.
14 1102 Broadway, Ste. 500
15 Tacoma, WA 98402

Keith E. Moxon
Buck & Gordon
1011 Western Avenue, Ste. 902
Seattle, WA 98104

16 John Spencer
17 Attorney
18 5308 12th Street East
19 Tacoma, WA 98424

Glenn M. Byrd
The Byrd Company
P.O. Box 6199
Federal Way, WA 98063

20 Brian C. Kipnis
21 U.S. Attorney's Office
22 601 Union Street, Ste. 5100
23 Seattle, WA 98101-3903

Christopher M. Huss
Attorney at Law
4224 Waller Road
Tacoma, WA 98443-1623

24 William F. Joyce
25 John F. DeVleming
26 2100 Westlake Center Tower
1601 Fifth Avenue
Seattle, WA 98101-1686

Lori Houck Cora
U.S. Environmental Protection Agency
M.S. ORC-158
1200 6th Avenue
Seattle, WA 98101

I declare under penalty of perjury, under the laws of the State of Washington that the foregoing is true and correct.

DATED this 9th day of June, 2000 at Seattle, Washington.


Jody Redding

Hon. Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

NO. C99-5521 RJB

AMENDED CERTIFICATE OF SERVICE

BAY CHEMICAL COMPANY, INC.; BARBARA
ALLEN; CENEX AGRICULTURE, INC.; LONE
STAR NW, INC.; MINTERCREEK
DEVELOPMENT; NORDLUND BOAT
COMPANY, INC.; NORDLUND PROPERTIES
CO. INC.; NORMAN NORDLUND; PHYLLIS
NORDLUND; RYDER TRUCK RENTAL, INC.;
STREICH BROTHERS, INC.; KATHRYN M.
SWINEHART; VANCE LIFT TRUCK
SERVICES, INC.; OLSON & CURRAN
BARNACLE STOPPING; SEAGULL
PROOFING; SALT WATER FREE; VERTICAL
DRY DOCK CO., LTD.; dba OLE & CHARLIE'S
HIGH & DRY CO. AND OLE & DICK'S
BOATHOUSES; DON OLSON & ARNOLD
OLSON dba BIG "O" CO.' DON OLSON;
ARNOLD & PETER CURRAN dba WEST
WATERWAY ASSOCIATES; DONALD S. AND
BARBARA L. OLSON; CHARLES P. AND
PATRICIA CURRAN; MOLLY A. BARRY;
KAY E. OLSON,

Defendants,

I hereby certify that on May 26, 2000, I caused a true and correct copy of:

MOTION AND DECLARATION TO SHORTEN TIME;

ORDER GRANTING GENERAL METALS' MOTION TO SHORTEN TIME;

AMENDED CERTIFICATE OF SERVICE - 1

Williams, Kastner & Gibbs PLLC
Two Union Square, Suite 4100
Mail Address: P.O. Box 21926
Seattle, Washington 98111-3926
(206) 628-6600

1 **GENERAL METALS OF TACOMA, INC.'S MOTION TO INTERVENE;**

2 **DECLARATION OF MARK M. MYERS IN SUPPORT OF GENERAL METALS'**
3 **MOTION TO INTERVENE AND OPPOSING ENTRY OF CONSENT DECREE;**

4 **[PROPOSED] ORDER;**

5 **GENERAL METALS OF TACOMA, INC.'S MEMORANDUM IN OPPOSITION TO**
6 **UNITED STATES' MOTION TO ENTER CONSENT DECREE; and**

7 **CERTIFICATE OF SERVICE**

8 to be served via Federal Express, U.S. Priority Mail or ABC Legal Messenger, Inc. on the following
9 counsel:

10 ABC LEGAL MESSENGER, INC.

11 Steve Branom
12 Hackett Beecher & Hart
13 1601 5th Ave., Ste. 2200
14 Seattle, WA 98101

ABC LEGAL MESSENGER, INC.

William H. Chapman
Preston Gates & Ellis
701 Fifth Ave., Ste. 5400
Seattle, WA 98104-7078

13 FEDERAL EXPRESS

14 Gregory A. Jacoby
15 McGavick Graves, P.S.
16 1102 Broadway, Ste. 500
17 Tacoma, WA 98402

ABC LEGAL MESSENGER, INC.

Keith E. Moxon
Buck & Gordon
1011 Western Ave., Ste. 902
Seattle, WA 98104

16 FEDERAL EXPRESS

17 John Spencer
18 Attorney at Law
19 5308 12th Street E.
20 Tacoma, WA 98424

U.S. PRIORITY MAIL

Glenn M. Byrd
The Byrd Company
P. O. Box 6199
Federal Way, WA 98063

20 FEDERAL EXPRESS

21 Diana H. Hull
22 Assistant General Counsel
23 3600 N.W. 82nd Ave.
24 Miami, FL 33166
25

AMENDED CERTIFICATE OF SERVICE - 2

Williams, Kastner & Gibbs PLLC
Two Union Square, Suite 4100
Mail Address: P.O. Box 21926
Seattle, Washington 98111-3926
(206) 628-6600

ABC LEGAL MESSENGER, INC.

William F. Joyce
John F. DeVleming
Ogden Murphy Wallace PLLC
1601 5th Ave., Ste. 2100
Seattle, WA 98101-1686

FEDERAL EXPRESS

Neil M. Cowie
U.S. Department of Justice
Environmental & Natural Resources Div.
Environmental Enforcement Section
1425 New York Ave. N.W., Rm. 13073
Washington, D.C. 20005

ABC LEGAL MESSENGER, INC.

Lori Cora
Assistant Regional Counsel
U.S. Environ. Protection Agency
1200 Sixth Ave., ORC-158
Seattle, WA 98101

FEDERAL EXPRESS

Christopher M. Huss
Tussi & Sons, Inc.
4224 Waller Road
Tacoma, WA 98443-1623

ABC LEGAL MESSENGER, INC.

Brian Kipnis
Assistant U.S. Attorney
U.S. Attorneys Office
800 5th Ave., Rm. 3601
3600 Seafirst Plaza
Seattle, WA 98104

Signed at Seattle, Washington, this 1st day of June, 2000.


B. J. Halverson

ENTERED
ON DOCKET

MAY 16 2000

BY DEPUTY *EC*

FILED	LODGED
RECEIVED	
MAY 16 2000	
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY	DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BAY CHEMICAL COMPANY, et al.,

Defendants.

Case No. C99-5521RJB

MINUTE ORDER

Now, on this day of May, 2000, the court directs the Clerk to enter the following minute order:

This matter comes before the court on the plaintiff's Motion to Enter the Consent Decree filed on Friday, May 12, 2000. (Dkt. No. 18.) Pursuant to Local Civil Rule 7(d), the plaintiff's Motion to Enter the Consent Decree shall be noted for consideration on Friday, June 2, 2000.

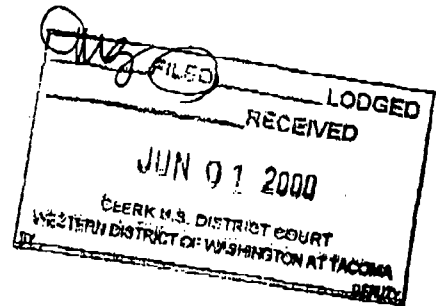
The foregoing Minute Order entered by *Joan Brine* Deputy Clerk, BY THE DIRECTION OF THE HONORABLE ROBERT J. BRYAN, UNITED STATES DISTRICT JUDGE

MINUTE ORDER - 1

21

ENTERED
ON DOCKET

JUN 01 2000

BY DEPUTY CMSUNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BAY CHEMICAL COMPANY, INC., et al.,

Defendants.

Case No. C99-5521RJB

MINUTE ORDER

Now, on this 31st day of May, 2000, the Court directs the Clerk to enter the following minute order:

Pursuant to the agreement of counsel, as communicated to Paula T. Olson, staff attorney for Judge Robert J. Bryan, General Metals of Tacoma Inc.'s Motion to Shorten Time (Dkt. #24) shall be stricken. General Metals of Tacoma Inc.'s Motion to Intervene (Dkt. #22) shall be noted for Friday, June 16, 2000. Plaintiff's Motion to Enter the Consent Decree (Dkt. #18) shall be renoted for Friday, June 16, 2000.

The foregoing Minute Order entered by Deen Baring, Deputy Clerk,
BY THE DIRECTION OF THE HONORABLE ROBERT J. BRYAN, UNITED STATES
DISTRICT JUDGE

March 14, 2000

United States v. Bay Chemical Co., Inc., et al.,
Civil Action No. C99-5521 RJB

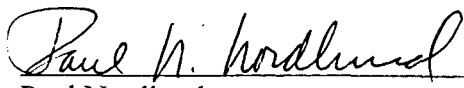
Following the review of information not previously known to the United States, pertaining to the Nordlund's leasing of the property currently known as the Hylebos Marina, at 1940 Marine View Drive, from 1968 until 1982, the United States determined that it was appropriate for the Nordlund parties to pay an increased amount to remain in this Consent Decree. The "Nordlund parties" refers to Nordlund Boat Co, Inc., Nordlund Properties Co., Inc., and Norman and Phyllis Nordlund. The United States Environmental Protection Agency ("EPA") has determined that the information regarding the Marina operations justify an increase in the appropriate amount of investigation costs attributable to the Nordlund parties. However, EPA does not consider the operation likely to have contributed significantly to contamination in the Hylebos waterway, and thus the United States has offered the Nordlund parties the opportunity to remain in the Consent Decree. By signing this letter agreement, the Nordlund parties agree to pay the total amount of \$110,760, including the one hundred percent premium required of all settling parties appearing in Appendix B to the Consent Decree. The revised Appendix B is attached. The United States will provide an explanation of the materials reviewed, the basis for this adjustment, and will respond to comments received on the consent decree in our briefing to the court in connection with the consent decree. Counsel should be aware, however, that the proposed change must be approved by the Assistant Attorney General and until the United States makes such a motion, the consent decree may be withdrawn.

Given this adjustment to the Consent Decree previously lodged with the United States District Court for the Western District of Washington, the United States proposes that counsel for all parties sign the attached signature pages to indicate that they have no objection to this adjustment.

The above referenced Consent Decree adjustment is accepted by Nordlund Boat Co, Inc., Nordlund Properties, Inc., and Norman and Phyllis Nordlund:

FOR NORDLUND BOAT COMPANY, INC.

Date: 3/21/00



Paul Nordlund
President
1626 Marine View Drive
Tacoma, WA 98422

FOR NORDLUND PROPERTIES COMPANY, INC.

Date: 3/21/00

Paul H. Nordlund

Paul Nordlund

President

1626 Marine View Drive

Tacoma, WA 98422

FOR NORMAN NORDLUND

Date: 3/21/00

Phyllis Nordlund

Phyllis Nordlund (co-owner of property owned
jointly with Norman Nordlund)

1626 Marine View Drive

Tacoma, WA 98422

PHYLLIS NORDLUND

Date: 3/21/00

Phyllis Nordlund

Phyllis Nordlund (co-owner of property
owned jointly with Norman Nordlund)

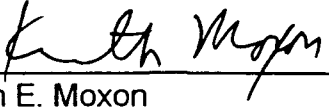
1626 Marine View Drive

Tacoma, WA 98422

The undersigned counsel assert that the parties they represent have no objection to this letter agreement and the adjustment made to the attached Appendix B to the Consent Decree in the matter of United States v. Bay Chemical, et al., Civ.Ac. No. C99-5521RJB, relating to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington:

FOR BAY CHEMICAL COMPANY, INC.; THE BAY
SMELTING COMPANY; THE BAY ZINC COMPANY, INC.; RICHARD J. CAMP, SR.;
KATHRYN SWINEHART;

Date: April 11, 2000

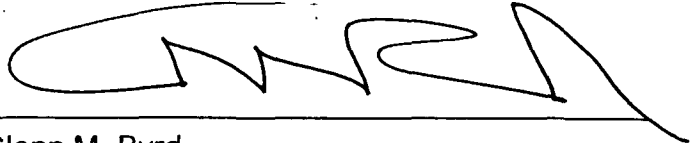


Keith E. Moxon
Buck & Gordon
1011 Western Avenue, Suite 902
Seattle, WA 98104
(206) 382-9540

The undersigned counsel assert that the parties they represent have no objection to this letter agreement and the adjustment made to the attached Appendix B to the Consent Decree in the matter of United States v. Bay Chemical, et al., Civ.Ac. No. C99-5521RJB, relating to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington:

FOR BARBARA W. ALLEN

Date: APRIL 3, 2000

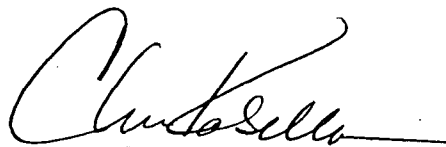
A handwritten signature in black ink, appearing to read 'G. Byrd', written over a horizontal line.

Glenn M. Byrd
The Byrd Company
P.O. Box 6199
Federal Way, WA 98063
(253) 661-1760

The undersigned counsel assert that the parties they represent have no objection to this letter agreement and the adjustment made to the attached Appendix B to the Consent Decree in the matter of United States v. Bay Chemical, et al., Civ.Ac. No. C99-5521RJB, relating to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington:

FOR CENEX AG, INC.

Date: 4/4/00



Chris Kabella

~~Vice President~~ *Senior Legal Counsel*

Cenex/Harvest States *Cooperatives*

P.O. Box 64089

St. Paul, MN 55164-0089

The undersigned counsel assert that the parties they represent have no objection to this letter agreement and the adjustment made to the attached Appendix B to the Consent Decree in the matter of United States v. Bay Chemical, et al., Civ.Ac. No. C99-5521RJB, relating to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington:

FOR LONE STAR NORTHWEST, INC.

Date: 4/3/00

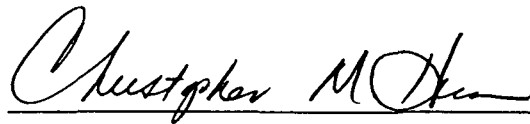
W H Chapman

William H. Chapman, Esq
Preston Gates & Ellis
5400 Columbia Center
701 Fifth Avenue
Seattle, WA 98104-7078
(206) 623-7580

The undersigned counsel assert that the parties they represent have no objection to this letter agreement and the adjustment made to the attached Appendix B to the Consent Decree in the matter of United States v. Bay Chemical, et al., Civ.Ac. No. C99-5521RJB, relating to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington:

FOR MINTERCREEK DEVELOPMENT

Date: 4/4/00



Christopher M. Huss

Attorney at Law

4224 Waller Road

Tacoma, WA 98443-1623

(253) 922-6676

The undersigned counsel assert that the parties they represent have no objection to this letter agreement and the adjustment made to the attached Appendix B to the Consent Decree in the matter of United States v. Bay Chemical, et al., Civ.Ac. No. C99-5521RJB, relating to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington:

FOR RYDER TRUCK RENTAL, INC.

Date: _____

4/3/00



Diana H. Hull

Assistant General Counsel

3600 NW 82nd Avenue

Miami, FL 33166

The undersigned counsel assert that the parties they represent have no objection to this letter agreement and the adjustment made to the attached Appendix B to the Consent Decree in the matter of United States v. Bay Chemical, et al., Civ.Ac. No. C99-5521RJB, relating to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington:

FOR OLSON 7 CURRAN BARNACLE STOPPING; SEAGULL PROOFING, SALT WATER FREE, VERTICAL DRY DOCK CO., LTD.; dba OLE & CHARLIE'S HIGH & DRY CO. AND OLE & DICK'S BOATHOUSES; DON OLSON & ARNOLD OLSON dba BIG "O" CO., DON OLSON; ARNOLD & PETER CURRAN dba WEST-WATERWAY ASSOCIATES; DONALD S. AND BARBARA L. OLSON; CHARLES P. AND PATRICIA CURRAN; MOLLY E. BARRY; KAY E. OLSON.

Date: _____

4/3/2000



Steven Branom

Attorney at Law

1601 5th Avenue, Suite 2200

Seattle, WA 98101-1625

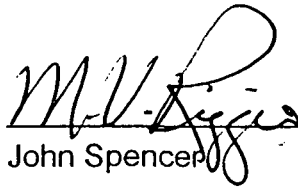
(206) 624-2200

The undersigned counsel assert that the parties they represent have no objection to this letter agreement and the adjustment made to the attached Appendix B to the Consent Decree in the matter of United States v. Bay Chemical, et al., Civ.Ac. No. C99-5521RJB, relating to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington:

FOR STREICH BROTHERS, INC.

Date: _____

4/18/00



John Spencer

Attorney

5308 12th Street East

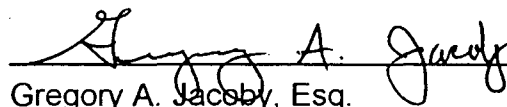
Tacoma, WA 98424

(253) 922-8724

The undersigned counsel assert that the parties they represent have no objection to this letter agreement and the adjustment made to the attached Appendix B to the Consent Decree in the matter of United States v. Bay Chemical, et al., Civ.Ac. No. C99-5521RJB, relating to the Hylebos Waterway Problem Areas within the Commencement Bay Nearshore/Tideflats Superfund Site in the City of Tacoma, Pierce County, Washington:

FOR VANCE LIFT TRUCK SERVICES, INC.

Date: 3-20-00



Gregory A. Jacoby, Esq.
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181

Appendix B to the Consent Decree in United States vs. Bay Chemical et al., Civ. No. C99-5521 (RJB)

Settling Defendant	Past Cost Payment	Future RD/RA Cost Payment	100% Premium	Total Future Cost Payment	Total Payment Amount
Cenex Agriculture, Inc.	\$44,275	\$4,780	\$49,055	\$53,835	\$98,110
Nordlund Boat Co, Inc.	\$50,600	\$4,780	\$55,380	\$60,160	\$110,760
Nordlund Properties, Inc.					
Norman and Phyllis Nordlund					
Ryder Truck Rental, Inc.	\$18,975	\$2,390	\$21,365	\$23,755	\$42,730
Vance Lift Truck Services, Inc.	\$18,975	\$2,390	\$21,365	\$23,755	\$42,730
Barbara Allen	\$18,975	\$6,394	\$25,369	\$31,763	\$50,738
Ole and Charlie's Marinas, Inc.	\$56,925	\$16,220	\$73,145	\$89,365	\$146,290
Streich Brothers, Inc,	\$50,600	\$4,780	\$55,380	\$60,160	\$110,760
Total	\$259,325			\$342,793	\$602,118

